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May 6, 2013

Beth N. Mizuno, Esq.  
U.S. Nuclear Regulatory Commission  
Office of General Counsel  
Mail Stop O-15 D21  
Washington, DC 20555

**Re: NRC License No. DPR-36 (Docket No. 50-309, 72-030; Maine Yankee) Proposed  
Merger of Two Existing Minority Shareholders of an Existing Licensee**

Dear Ms. Mizuno,

In follow-up to our conversation last Friday, this letter provides background information related to the planned merger of Maine Public Service Company ("MPS") and Bangor Hydro Electric Company ("Bangor Hydro Electric"), both subsidiaries of BHE Holdings, Inc. ("BHE Holdings"). This law firm represents BHE Holdings and its subsidiaries. As we discussed, based on the NRC's prior 2010 evaluation of BHE Holding's acquisition of Maine & Maritimes Corporation (the parent of MPS), my clients request that you determine that the planned merger does not constitute a transfer that requires NRC consent pursuant to 10 CFR 50.80.

MPS is a regulated electric transmission and distribution utility serving approximately 36,000 electric accounts in northern Maine. Bangor Hydro Electric, also a transmission and distribution utility, provides electricity for approximately 117,000 customers in eastern Maine. Both companies are "electric utilities" regulated by the Maine Public Utilities Commission ("MPUC"). On November 29, 2012 the Applicants filed a Joint Petition with MPUC for a corporate merger of Bangor Hydro Electric and MPS to form "a single legal entity to optimize safe, reliable and efficient operations in a single service territory."<sup>1</sup> MPS and Bangor Hydro Electric, each respectively hold a 5% and 7% minority shareholder interests in Maine Yankee Atomic Power Company ("Maine Yankee" or "licensee").

Maine Yankee holds a possession-only license for maintenance of an Independent Spent Fuel Storage Facility ("ISFSI") located in Wiscasset, Maine, and is the *sole* licensee for the facility; operation of the nuclear generation facility on the site was permanently shut down in 1997, and the facility dismantled and decommissioned. The ISFSI is secured and monitored, and access limited, by Maine Yankee officers and employees.

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<sup>1</sup> *Bangor Hydro Electric Co., Maine Public Service Co., Maine Electric Power Co., Inc. and Chester SVC P'ship Request for Approval of Reorganization (Joint Petition)*, No. 2012-00571 (Me. P.U.C. Nov. 29, 2012) at 1.

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MPS and Bangor Hydro Electric have no role in reviewing, approving or otherwise influencing the operational safety or security of the Maine Yankee facility. MPS and Bangor Hydro Electric, like other Maine Yankee shareholders, are obligated to pay their pro-rata share of Maine Yankee's operating costs, which are predominately ISFSI-related.

The proposed merger of MPS and Bangor Hydro Electric involves the transfer of control of MPS's interest in Maine Yankee as a result of a restructuring plan in which MPS will be merged with and into Bangor Hydro Electric and other Maine & Maritimes entities would dissolved (the "Transaction"). Attachment A shows simplified organizational charts for "before" and "after" the completion of the Transaction, with the minority shareholders of Maine Yankee marked with an asterisk. Following receipt of all necessary regulatory approvals, the parties intend to complete the merger in or about the fourth quarter of 2013.

In a letter dated June 17, 2010 (NRC Accession No. ML 101760040), Maine Yankee, acting on behalf of MPS, notified the NRC of the then-proposed acquisition of Maine and Maritimes by BHE Holdings. The "before" organization chart of Attachment A reflects the acquisition and merger of parent companies reviewed by the NRC in 2010. At that time the NRC staff concluded the historic transaction did not involve an indirect or direct transfer of the ISFSI license held by Maine Yankee.<sup>2</sup>

With respect to the pending Transaction, because MPS and Bangor Hydro Electric do *not* hold the license for the Maine Yankee site, and are minority shareholders in Maine Yankee, collectively holding a 12% interest, the proposed Transaction also does not involve the transfer of control, either direct or indirect, of the Maine Yankee site and ISFSI or the NRC license held by Maine Yankee. Accordingly, consistent with existing precedent, NRC approval of the transaction does not appear to be necessary.

## **Merger/Consolidation of MPS and Bangor Hydro Electric per Maine PUC-directed Study**

MPUC approved BHE Holdings' acquisition of MPS in 2010. As part of that approval, MPUC required Bangor Hydro Electric and MPS to file a report on the costs and benefits of consolidating the operations of the MPS and Bangor Hydro Electric or merging them into a single utility. Based on the results of these reviews, MPS and Bangor Hydro Electric "have each concluded that further integration efforts as well as a merger of the Utilities is in the best interests of their ratepayers."<sup>3</sup> The transaction is anticipated to result in \$733,000 of potential annual cost savings ultimately to the benefit of the retail electric service customers in the Maine service areas. The consolidation of MPS and Bangor Hydro Electric, then, is one of several steps in the consolidation of BHE Holdings' activities regulated by the MPUC.

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<sup>2</sup> See NRC letter from Mr. John Goshen, Project Manager, Division of Spent Fuel Storage and Transportation, to Mr. James Connell, NRC Accession No. ML 103000097, Oct. 26, 2010.

<sup>3</sup> *Bangor Hydro Electric Co., Maine Public Service Co., Maine Electric Power Co., Inc. and Chester SVC P'ship Request for Approval of Reorganization (Joint Petition)*, No. 2012-00571 (Me. P.U.C. Nov. 29 2012) at 2.

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The surviving corporation's name of "MergerCo" depicted on Attachment A is to be determined. The Applicants will keep the NRC informed of any significant changes in the plan or schedule for the Transaction, and will supplement this request as necessary should the plan or schedule change.

**Foreign Ownership, Control or Domination (FOCD)**

The consolidation of MPS and Bangor Hydro Electric will not result in a change in foreign ownership, control, domination, or influence over the licensee, Maine Yankee, within the meaning of Section 103(d) or 104(d) of the Atomic Energy Act and the licensee eligibility requirements of 10 C.F.R. § 50.38. BHE Holdings is the present parent of both Bangor Hydro Electric, which holds a 7% ownership interest in the licensee, and MPS, which holds a 5% interest in the licensee, Maine Yankee. BHE Holdings is incorporated in the state of Maine, and has its headquarters located in Bangor, Maine. BHE Holdings is a subsidiary of Emera US Holdings. Emera US Holdings, in turn, is a subsidiary of Emera, Inc., a Canadian corporation ("Emera"). The Transaction will not change Emera's cumulative ownership interest in Maine Yankee which was reviewed by the NRC staff in 2010.

Maine Yankee is governed by a Board of Directors. Each shareholder of Maine Yankee owning up to a 15% interest is entitled to appoint one member of the Maine Yankee Board, and shareholders owning 15% or more interest are entitled to appoint up to three (3) members of the Board. More specifically, Article V of Maine Yankee's Amended and Restated By-laws, adopted June 13, 2006, and effective July 1, 2006, includes the following provision:

The number of directors shall consist of such number of directors as are appointed by the shareholders in accordance with this Article V. Each shareholder shall be entitled to appoint to the Board of Directors as provided in this Article V, (a) **one (1) director, in the case of a shareholder holding less than fifteen percent (15%) of the outstanding shares of common stock of the Corporation, or (b) up to three (3) directors, at such shareholder's option, in the case of a shareholder holding fifteen percent (15%) or more of the outstanding shares of common stock of the Corporation.**

Accordingly, both MPS and Bangor Hydro Electric currently have an appointed member on the Maine Yankee Board. The representatives of MPS and Bangor Hydro Electric who currently serve on the Maine Yankee Board are U.S. citizens, as are both alternates. Each representative's vote on the Maine Yankee Board is weighted by their owner appointee's percentage ownership of Maine Yankee. The MPS and Bangor Hydro Electric appointed directors together represent a 12% minority on the Board and represent the totality of indirect corporate governance or influence over Maine Yankee by BHE Holdings or Emera. Moreover, following the Transaction, MergerCo's interest of 12% in Maine Yankee will remain less than the 15% threshold, thus, MergerCo will only be able to appoint one member to the Maine Yankee Board, voting the combined 12% ownership; therefore, maintaining the same level of control that BHE Holdings or, by extension, Emera, currently has to control the licensed facility or decisions of the licensee.

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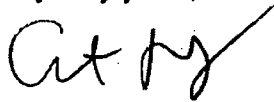
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In addition, on December 14, 2011, to address issues of Foreign Ownership, Control, or Influence (FOCI) under 10 C.F.R. Part 95, as well as FOCD under 10 C.F.R. Part 50, the Maine Yankee Board of Directors adopted a Negation Action Plan specifically for Maine Yankee that assures that neither Emera nor any other foreign-controlled shareholder will exert control, domination, or influence over operational safety or security matters at Maine Yankee. That Negation Action Plan, as revised, was submitted to the NRC on April 24, 2012.<sup>4</sup> In accordance with the Plan, MergerCo following the Transaction will have no access to security information related to Maine Yankee or to special nuclear material related to Maine Yankee.

**Conclusion**

As previously noted, the merger is anticipated to close by the end of 2013, subject to receipt of all required regulatory approvals. I therefore request your review of this letter as soon as practical so that, if NRC threshold determination or consent is required, an application can be filed by the end of June, 2013, allowing the NRC staff further time for review. Should you have any questions or require additional information regarding the request in this letter, please feel free to contact me.

Very truly yours,



Arthur H. Domby

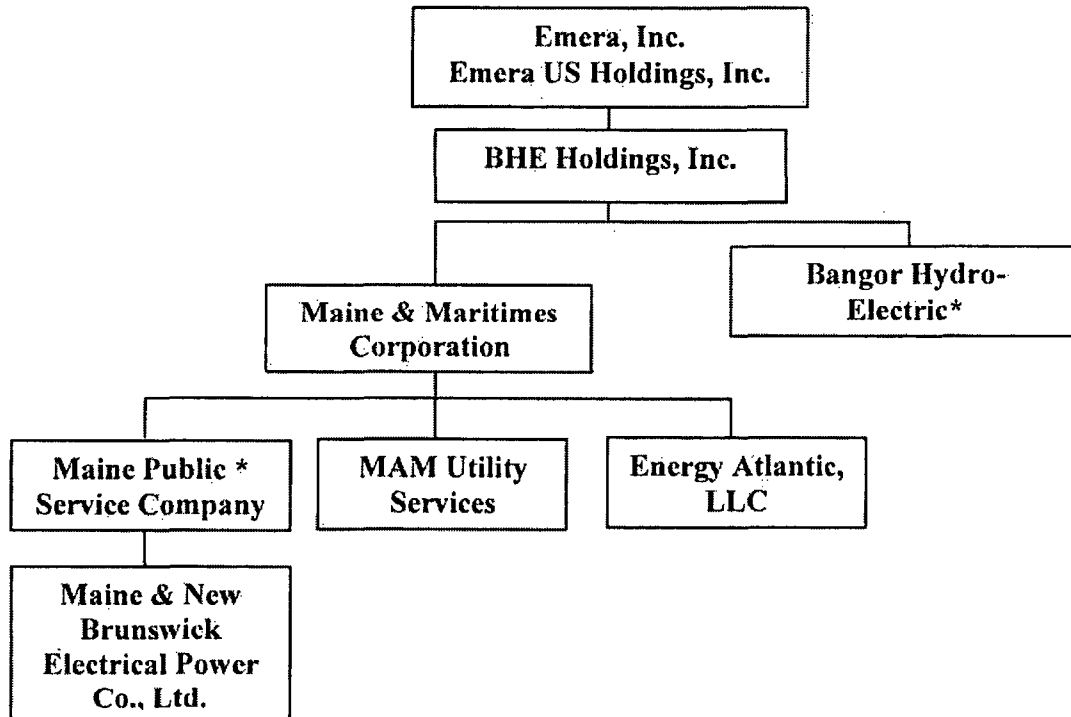
cc: Joseph Fay, Esq. (Maine Yankee)  
Karen R. Holyoke (BHE Holdings)

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<sup>4</sup> *Maine Yankee Letter from Wayne Norton, Chief Nuclear Officer, to NRC*, Accession No. ML 12125A042, Apr. 24, 2012.

## ATTACHMENT A

Pre-merger figure of Emera, MPS and Bangor Hydro-Electric



**2013 Proposed Post-merger figure of Emera and Bangor Hydro-Electric:**

